



HONG KONG MONETARY AUTHORITY

香港金融管理局

Our Ref: B1/15C
B9/202C

5 May 2022

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Mandatory Reference Checking Scheme

I am writing to draw your attention to the Guidelines on the Mandatory Reference Checking (“MRC”) Scheme issued by the Hong Kong Association of Banks (“HKAB”) and the DTC Association today. The Hong Kong Monetary Authority (“HKMA”) endorses the MRC Scheme.

Background

The MRC Scheme seeks to address the “rolling bad apples” phenomenon in the banking sector in Hong Kong, i.e. situations where individuals who engage in misconduct during their employment in one institution are able to obtain subsequent employment in another institution without disclosing their misconduct to the new employer. Such individuals who are not held accountable at one institution and surface at another can potentially have a higher likelihood of repeating their misconduct. This may give rise to operational, reputational, financial and other risks at the new employer institution. More broadly, “rolling bad apples” may also inflict harm on bank customers and undermine public confidence in the banking sector.

The MRC Scheme

Against this background, the HKMA consulted the banking industry in mid-2020 on a proposed framework to facilitate Authorized Institutions (“AIs”) to bilaterally obtain reference information during their recruitment process for certain positions, such that misconduct information in an individual’s previous employments can be provided to AIs to inform their employment decisions. Taking into account the responses received, the Consultation Conclusions issued by the HKMA in May 2021 set out the underlying principles and key parameters for the MRC Scheme, and invited an industry working group led

by HKAB to further flesh out the operational details, in consultation with the HKMA.

The Guidelines on the MRC Scheme issued by the industry associations today provide the operational details of the MRC Scheme. In gist, AIs recruiting for certain specified positions that fall within the scope of the MRC Scheme (“recruiting AIs”) will be required to approach the former and current AI employer(s) of a prospective employee (“reference providing AIs”) to request conduct-related information covering the seven years prior to the application for such position. Misconduct information to be reported includes (i) breach of legal or regulatory requirements; (ii) incidents which cast doubt on an individual’s honesty and integrity; (iii) misconduct reports filed with the HKMA; (iv) internal or external disciplinary actions arising from conduct matters; and (v) ongoing internal investigations. Reference providing AIs should respond within one month of the MRC request using a standard template.

It is worth emphasising that one of the underlying principles of the MRC Scheme is that misconduct matters that are deemed serious or material in nature should be reported by reference providing AIs, irrespective of whether or not the employment of the individual concerned was terminated for the misconduct. Recruiting AIs, while retaining the discretion and remaining responsible for their employment decisions, should document their reasons for employing an individual notwithstanding negative or inconclusive information received.

Implementation

The MRC Scheme is applicable to all AIs and will be implemented by phases. In Phase 1, the positions to be covered include directors, chief executives, alternate chief executives and managers as defined under the Banking Ordinance, as well as executive officers and responsible officers for securities, insurance and Mandatory Provident Fund (“MPF”) regulated activities. A review of the Scheme will be conducted two years after the implementation of Phase 1 (i.e. in mid-2025). The findings of the review will help refine the Scheme in its Phase 2, which is expected to be expanded to also cover individuals licensed or registered to carry out regulated activities. Please refer to the Annex for details on the positions to be covered in Phase 1 and Phase 2.

To allow sufficient time for AIs to put in place necessary internal controls, policies and procedures, there is a 12-month preparatory period for the implementation of the MRC Scheme, i.e. AIs are expected to implement Phase 1 of the MRC Scheme by 2 May 2023.

HKMA's Supervisory Approach

The MRC Scheme is an important component of the HKMA's effort for the further enhancement of bank culture in Hong Kong. While the MRC Scheme is not introduced as a supervisory requirement, the HKMA attaches great importance to the effective implementation of the Scheme. In particular, the HKMA considers that repeated failures of an AI to adhere to the requirements of the MRC Scheme may indicate potential weaknesses with its governance arrangements or internal controls and procedures. The HKMA will monitor AIs' observance of the MRC Scheme during its ongoing supervisory efforts and may initiate follow-up actions with the AIs concerned as appropriate.

If there are any questions about this circular, please contact Mr Osbert Lam at 2878-8795 or Ms Amy Wong at 2878-8830. If there are any questions about the Guidelines of the MRC Scheme, please contact your industry association.

Yours faithfully,

Arthur Yuen
Deputy Chief Executive

Encl.

c.c. The Chairperson, The Hong Kong Association of Banks
The Chairperson, The DTC Association

Annex

Coverage of personnel of the MRC Scheme

Phase 1

- Directors approved under §71 of the Banking Ordinance (“BO”)
- Chief executives and alternate chief executives approved under §71 of the BO
- Managers notified to the HKMA under §72B of the BO
- Executive officers approved under §71C of the BO
- Responsible officers (“ROs”) approved by the Insurance Authority (“IA”) under §64ZE of the Insurance Ordinance (“IO”)
- ROs approved by the Mandatory Provident Fund Schemes Authority (“MPFA”) under §34W of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”)

Phase 2

- All personnel already covered in Phase 1
- Staff licensed to carry out securities related regulated activities under the Securities and Futures Ordinance (i.e. Relevant Individuals, or “ReIs”)
- Staff licensed to carry out insurance related regulated activities under the IO (i.e. Technical Representatives licensed by the IA under §64Y or §64ZC of the IO, or “TRs”)
- Staff registered to carry out regulated activities under the MPFSO (i.e. subsidiary intermediaries registered with the MPFA under §34U(4) of the MPFSO)